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BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of the Proposed)	NOTICE OF PUBLIC HEARING
Amendment of ARM 38.5.8201,)	ON THE AMENDMENT OF
38.5.8202, and 38.5.8226 and)	EXISTING RULES AND
the Proposed Adoption of New)	ADOPTION OF NEW RULES
Rules I and II, all pertaining)	
to the Electric Utility Industry)		
Restructuring and Customer)	
Choice Act, Minimum Filing)	
Requirements, Advanced Approval)	
Applications, and Fees)	

TO: All Concerned Persons

1. On November 25, 2003, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Ave., Helena, Montana, to consider the proposed amendment of existing rules ARM 38.5.8201, 38.5.8202, and 38.5.8226 and adoption of new rules I and II.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation contact the PSC no later than 5:00 p.m. on November 17, 2003 to advise us of the nature of the accommodation that you need. Please contact, Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@state.mt.us.

3. The rules proposed to be amended provide as follows new material underlined, stricken material interlined:

38.5.8201 INTRODUCTION AND APPLICABILITY

(1) These guidelines provide policy guidance to default supply utilities (DSU) on long-term default electricity supply resource planning and procurement. The guidelines do not impose on DSUs specific resource procurement processes nor mandate particular resource acquisitions. Instead, the guidelines describe a process framework for considering resource needs and suggest optimal ways of meeting those needs. Electricity default supply resource decisions affect the public interest. A DSU can better fulfill its obligations, mitigate risks and achieve resource procurement goals if it includes the public in the portfolio planning process. An independent advisory committee of respected technical and public policy experts may offer the DSU an excellent

source of up-front, substantive input that would help mitigate risk and improve resource procurement outcomes in a manner consistent with these guidelines. Consistent with these guidelines, and after an opportunity for public input, the DSU must ultimately make electricity resource acquisition decisions based on economics, reliability, management expertise and sound judgment.

(2) A DSU should thoroughly document its default supply portfolio planning processes, resource procurement processes and management decision-making so that it can fully demonstrate to the commission and stakeholders the prudence of default supply-related costs and/or justify requests for advanced approval of power purchase agreements. A DSU should routinely communicate with the commission and stakeholders regarding on-going default supply portfolio planning and resource procurement activities.

(3) These guidelines will provide the basis for commission review and consideration of the prudence of a DSU's default supply resource planning and procurement actions, and are the standards against which the commission will evaluate the reasonableness of power supply agreements filed as part of a DSU's application for advanced approval. As such, the guidelines should assist DSUs in making prudent decisions and in fully recovering default supply-related costs. Successful application of the guidelines will require a commitment from the commission, DSUs and stakeholders to honor the spirit and intent of the guidelines.

AUTH: 69-8-403, MCA.

IMP: 69-8-403, MCA.

38.5.8202 DEFINITIONS For the purpose of this subchapter, the following definitions are applicable:

(1) "Default supply costs" means the actual electricity supply costs of providing default supply service, including but not limited to: capacity costs, energy costs, fuel costs, ancillary service costs, demand-side management and energy efficiency costs, transmission costs (including congestion and losses), billing costs, planning and administrative costs, and any other costs directly related to the purchase of electricity, management of default electricity supply costs and provision of default supply and related services.

(2) "Default supply resource" means:

(a) a wholesale power transaction, including bilateral contracts, however structured, and spot energy purchases;

(b) a demand-side management activity, including energy efficiency and conservation programs, load control programs and pricing mechanisms; or

(c) a combination of wholesale power transactions and demand-side management activities.

(3) "Default supply utility or DSU" means a distribution services provider regulated by the commission.

(4) "Environmentally responsible" means explicitly recognizing and incorporating into default supply portfolio

planning, management and procurement processes and decision-making the policy of the state of Montana to encourage utilities to acquire resources in a manner that will help ensure a clean, healthful, safe and economically productive environment.

(5) "External costs" means costs incurred by society but not incorporated directly into electricity production and delivery activities, or retail prices for electricity services directly paid by consumers.

(6) "Long-term" means a time period at least as long as a DSU's default supply planning horizon. Long-term should also be considered that time period in which a DSU can reasonably expect to provide default supply service.

(7) "Planning horizon" means the longer of:

(a) the longest remaining contract term in a DSU's current default supply portfolio;

(b) the longest contract term being considered for a new resource acquisition; or

(c) 10 years.

(8) "Pre-filing communication" means, with respect to an application by a DSU for advanced approval, informal information exchange, including oral dialogue and written discovery, between the DSU and members of its stakeholder advisory committee, the Montana Consumer Counsel, other stakeholders and commission staff that occurs after the DSU files a notice of intent to request advanced approval pursuant to [New Rule I] up to the date the DSU files an application for advanced approval.

(9) "Rate stability" means minimal price variation, both month-to-month and year-to-year, and minimal price inflation over time.

(10) "Stakeholder" means a member of the public (individual, corporation, organization, group, etc.) who may have a special interest in, or may be especially affected by, these rules.

AUTH: 69-8-403, MCA.

IMP: 69-8-403, MCA.

38.5.8226 DEFAULT SUPPLY RESOURCE PLANNING AND PROCUREMENT FILINGS (1) A DSU must file a comprehensive, long-term portfolio management and resource procurement plan by December 15 in each odd-numbered year.

(2) As necessary, a DSU's cost tracking filings should include the information, analyses and documentation recommended in these guidelines to support its request for cost recovery related to default supply resource additions or changes.

(3) A DSU's annual cost tracking filing should document the status of on-going default supply portfolio planning, management and resource procurement activities and include rolling three-year action plans. Action plans should

include a discussion of activities involving transmission and distribution functions and services.

~~(3)~~ (4) The commission may implement a DSU's annual cost recovery request on an interim basis, subject to retroactive adjustment, to allow adequate time to process such requests and render a final order.

AUTH: 69-8-403, MCA.

IMP: 69-8-403, MCA.

4. The new rules proposed to be adopted provide as follows:

NEW RULE I MINIMUM FILING REQUIREMENTS FOR DSU APPLICATIONS FOR ADVANCED APPROVAL

(1) If a DSU intends to file an application for advanced approval of a power purchase agreement, it must notify the commission and the Consumer Counsel far enough in advance of filing to accommodate adequate pre-filing communication. If the power purchase contract will result from a competitive solicitation, notice must be provided before the DSU issues a request for proposals. For opportunity resources, the DSU should provide notice immediately upon a determination by the DSU that a real and viable opportunity exists and should be pursued.

(2) An application by a DSU for advanced approval of a power purchase agreement must incorporate by reference the DSU's most recent long-term resource plan, must include the DSU's most recent 3 year action plan, and must provide:

(a) a complete explanation and justification of all changes, if any, to the DSU's most recent long-term resource plan and 3 year action plan, including how the DSU has responded to all commission written comments on the long-term plan;

(b) a copy of the proposed power purchase agreement, including all appendices and attachments, if any;

(c) testimony and supporting work papers demonstrating the need for the resource/electricity supply product(s) underlying the power purchase agreement;

(d) testimony and supporting work papers demonstrating that the resource/electricity supply product(s) underlying the power purchase agreement is in the public interest, will facilitate achieving the goals and objectives of these guidelines and complies with all resource procurement guidelines in this Subchapter;

(e) if the power purchase agreement resulted from a competitive solicitation, copies of:

(i) the DSU's request for proposals;

(ii) all bids received;

(iii) testimony and work papers demonstrating all due diligence and bid evaluation conducted by the DSU, including the application of bid rating mechanisms and management judgment;

(f) testimony and supporting work papers demonstrating that the price, term and quantity associated with the power purchase agreement are reasonable and in the public interest;

(g) thorough explanation and justification for any other terms in the power purchase agreement for which the DSU is requesting advanced approval;

(h) testimony describing all pre-filing communication;

(i) thorough explanation and justification for any request for a commission decision less than 180 days from the date the DSU's application is filed including a specific plan for ensuring adequate due process;

(j) testimony and supporting documentation related to any advice received from the DSU's stakeholder advisory committee regarding the power purchase agreement or the underlying resource/electricity product(s) and actions taken or not taken by the DSU in response to such advice.

AUTH: 69-8-403 and 69-8-419, MCA.

IMP: 69-8- 403 and 69-8-419, MCA.

NEW RULE II CONSULTANT FEES (1) When the commission engages independent consultants or advisory services to evaluate a utility's default supply resource procurement plans and proposed power supply purchase agreements pursuant to 69-8-421, MCA, the commission will charge the default supplier a fee commensurate with the costs of the consultant or advisory services. The default supplier, at the commission's direction, will deposit the fee into the commission's account in the special revenue fund pursuant to 69-8-421, MCA. The initial fee charged to the default supplier will be based upon the commission's estimate of costs for the consultant or advisory services. The commission may revise the fee amount as the actual costs become known.

AUTH: 69-8-403, MCA

IMP: 69-1-114 and 69-8-421, MCA

5. Rationale: The amendments and new rules are reasonably necessary to comply with the Electric Utility Industry Restructuring and Customer Choice Act (Title 69, Ch. 8, MCA) as modified by Ch. 509, L. 2003 (SB 247) which requires the PSC to promulgate rules, by December 31, 2003, to guide the default supply resource planning and procurement process. Such required guidance necessarily involves addition of definitions, minimum filing requirements for default supplier advanced approval requests regarding proposed power supply purchase agreements, and procedures pertaining to fees.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than

November 18, 2003, or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.state.mt.us/PublicComment/PublicComment.htm> no later than November 18, 2003.

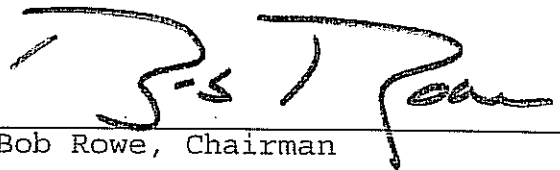
(PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-03.10.5-RUL.")

7. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

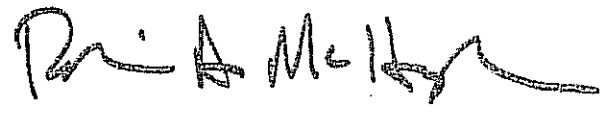
8. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

9. The PSC maintains a list of persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines, motor carriers, rail carriers, and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@state.mt.us, or may be made by completing a request form at any rules hearing held by the PSC.

10. Both bill sponsor notice requirements of § 2-4-302, MCA, apply and have been fulfilled.



Bob Rowe, Chairman



Reviewed by Robin McHugh

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 6, 2003.